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10/552,945	08/09/2006	Dusan Miljkovic	100700.0024US1	2506

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EXAMINER	
MEHTA, HONG T	

ART UNIT	PAPER NUMBER
1784	

NOTIFICATION DATE	DELIVERY MODE
08/18/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/552,945	MILJKOVIC ET AL.	
	Examiner	Art Unit	
	HONG MEHTA	1784	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 July 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *34-40* is/are allowed.

6)☒ Claim(s) *22-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to applicant's amendments filed on July 14, 2010.

New claims 22-40 are pending. Claims 1-21 are cancelled.

Claim Objections

1. Claim 1 is objected to because of the following informalities: the language of the claims recites "coffee cherries are optionally quick-dried coffee cherries having a residual water content of equal or less than 20 wt %" (lines 3-4). The term "optionally" renders the coffee cherries to be an option not to use quick-dried coffee cherries having a residual water content of equal or less than 20 wt %. Examiner proceeded with the examination of food product with coffee cherries, comminuted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "having a residual water content of equal or less than 20%" in claim 1 is a relative term which renders the claim indefinite. The term "having residual water content of equal or less than 20%" is not defined by the claim, and does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would

not be reasonably apprised of the scope of the invention. Does the amount of residual water content refers to the food product or the coffee cherries?

4. Claim 22 recite the limitation "the coffee cherries" in line 3. There is insufficient antecedent basis for this limitation in the claims. Examiner suggests in claim 22, line 3 to insert "comminuted whole" between words "the" and "coffee cherries" to overcome antecedent basis rejection.

5. Claims 23, 24, 25, 26, 27 29 recite the limitation "the whole coffee cherries" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. **Claims 22-29, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sivetz et al. (Coffee Technology 1979) and in view of Bucheli et al. (J. Agric. Food Chem. 48, 1358-1362).**

10. **Regarding claims 22-29, 32 and 33** Sivetz et al. discloses food product comprising a preparation of whole coffee cherry (pg. 76, line 12). Unripe whole coffee is considered to include sub-ripe coffee cherry. Sivetz discuss quick-dried as a whole fruit with mechanical driers or on the sun-drying terrace to make a *natural* coffee, a food product (pg. 76, line 13-14). Sivetz et al. discloses the strip-picked heterogeneous mixture, including green coffee cherry, ripe and soft overripe which vary in proportions as harvest season progress, are made into *natural* coffee (pg. 86, paragraph 6). Sivetz et al. discloses process of drying process (pg. 82, paragraph 3) of the coffee cherry into *natural* coffee wherein producing an excellent quality, clean tasting and full bodied coffee foodstuff upon human consumption. Examiner considers the mentions to tasting attribute are taste evaluations due to oral consumption by humans.

11. Sivetz et al. discloses natural coffee (pg. 86, paragraph 6) which is processed into soluble coffee. Sivetz's process of hulled coffee beans (extract) from dried coffee cherry is considered to be an extract of whole coffee cherry wherein the coffee cherry is

quick dried with mechanical driers or sun drying terrace. It is well known in the art that soluble coffee with the addition of water is a popular consumed beverage; therefore Examiner considers soluble coffee as food ingredient and extract in a food product, coffee beverage. Furthermore, Examiner considers Sivetz's preparation of whole coffee cherry with exposure to sun-drying terrace and mechanical driers as quick-dried preparation, as defined in Applicant's specification as using heated air exposure to sun and/or ambient air on page 3, lines 24-26.

12. Sivetz et al. discloses the cherries to be sub-ripe coffee cherry in all stages of ripeness, including green color (pg. 76, lines 11) and cherry refers to the red color of the coffee fruit are harvest and to be processed by quick-drying. Sivetz et al. discusses the high moisture content in coffee promotes the growth of microorganism such as molds, fungi and bacteria (pg. 81, para. 2, pg. 127, para. 3; pg. 128). As Applicant disclose "...mycotoxins are typically present in substantial quantities in ripe and overripe coffee cherries, whereas quick-dried sub-ripe coffee cherries or portions thereof, are substantially devoid or have very low content of mycotoxins" (page 3, paragraphs 2 and 3).

13. Sivetz et al. is silent on the quick-dried cherry having a designated myotoxin levels.

14. Bucheli et al. discloses nonripe coffee cherries (sub-ripe coffee cherry) dried before being dehulled and separated into a green coffee and husk fractions (pg. 1359, col. 2, lines 15-23). The coffee cherries contain only trace amounts of OTA in a range of not detectable up to 0.6 μg/kg (ppm) and a husk fraction from about 0.2 to 0.9 μg/kg

(ppm) (pg. 1359, col. 2, lines 19-23; pg. 1360, Table 1) during sun-drying and between the zero day and under 5 days mark drying period. Bucheli discloses a dry matter content of cherries with a range of 79-88% (pg. 1360, col. 2, para. 3; pg. 1361, Figure 2) wherein the moisture content of the coffee cherry is considered to be about 10-12%.

15. It would have been obvious to one of ordinary skill in the art to use Bucheli's unripe quick-dry coffee cherry with low mycotoxin levels in Sivetz's *natural* coffee soluble food product because it would be beneficial to reduce exposure of high mycotoxins levels in food product to health of humans and animals. This reasonable expectation of success would motivate one of ordinary skill to modify the teaching of Bucheli and Sivetz to arrive at the instantly claimed composition.

16. **Regarding claims 23-25**, Bucheli does not specify the color of the sub-ripe cherries. The stages of maturity in coffee cherries are well known in the art to be associated with color of the coffee cherry fruit and ranges from green, yellow and red color. Since Bucheli et al. teaches overripe coffee cherry are undesirable due to its sugar content to promote microbial growth, fungi and ultimately mycotoxins, it would have been obvious to one of ordinary skill in the art to select coffee cherries with primarily red color with less than 25% green color to ensure a reduction the mycotoxin levels of dried coffee cherry.

17. **With respect to claim 28**, Sivetz in view of Bucheli teaches as beverage food product from comminuted coffee cherries as claimed in claim 22, therefore the beverage (extract) is expected to have substantially similar nutrient fractions material, such as caffeine as claimed.

18. **Regarding claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sivetz et al. (Coffee Technology 1979) and in view of Bucheli et al. (J. Agric. Food Chem. 48, 1358-1362) as applied to claim 22 above, and further in view of Kellogg (US 2,557,294).**

19. Sivetz et al. and Bucheli et al. disclose the claimed invention as discussed regarding claim 22.

20. Sivetz et al. and Bucheli et al. do not teach whole cherry particles (extract) in a cereal food product considered as solid food.

21. However, Kellogg discloses coffee extract used as a flavoring agent in cereals and cereal beverages (col. 4, lines 1-6). It would have been obvious to one of ordinary skill in the art to combine Sivetz and Bucheli's extract as a flavoring agent in cereal as taught by Kellogg because coffee extract and cereal food products are known successful combinations for flavoring purposes.

Allowable Subject Matter

22. Claims 34-40 are allowed.

Response to Arguments

23. Applicant's arguments with respect to claims 22-33 have been considered but are moot in view of the new ground(s) of rejection. Applicant canceled claims 1-21 and added new claims 22-33 which added new limitations to the claims and recite "coffee cherries are **optionally** quick-dried coffee cherries having a residual water content of equal or less than 20 wt %" (lines 3-4). The term "optionally" is interpreted to include

coffee cherries which are not quick-dried coffee cherries having a residual water content of equal or less than 20 wt %.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Htm

/Jennifer C. McNeil/
Supervisory Patent Examiner, Art Unit 1784